

Appl. No.: 09/980,192
Group Art Unit: 1651
Applicants' Reply to the Office Action mailed July 16, 2004

REMARKS

Claims 11-32 are currently pending in the present application. Claims 21-32 have been withdrawn from consideration by the Examiner as being directed to a non-elected invention. Claim 17 has been canceled without prejudice, and claims 11 and 19 have been amended without prejudice. No new matter has been introduced. Applicants submit that no fees for additional claims are due. A complete listing of all claims ever presented is included herein in accordance with 37 C.F.R. §1.121(c). Entry of the amendments is therefore proper and respectfully requested.

In the Office Action, the Examiner rejects claims 18-20 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner contends that the use of the two different phases "by weight based on the microemulsion" and "by weight based on the total weight of the microemulsion" renders the claims unclear. Claim 19 has been amended to read "by weight based on the microemulsion" as in claims 18 and 20. Applicants submit that it is clear that the weight percents set forth in claims 18-20 are based on the weight of the microemulsion comprising water, an oil phase and emulsifier. Reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph, are respectfully requested.

In the Office Action, the Examiner rejects claims 11-16 under 35 U.S.C. §102(b), as being anticipated by U.S. Pat. No. 4,401,762 of Tellier, *et al.* (hereinafter referred to as "Tellier"). While not necessarily agreeing with the Examiner's rejection or the arguments and contentions in support thereof, in an effort to expedite prosecution, Applicants have amended claim 11 to require the inclusion of an alkyl oligoglycoside, as previously presented in now canceled claim 17 which was not rejected as anticipated. Applicants respectfully submit that claim 11 and claims 12-16, which depend there from, are no longer anticipated by the cited references. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) is requested.

In the Office Action, the Examiner rejects claims 11-20 under 35 U.S.C. §103(a), as unpatentable over Tellier taken with U.S. Pat. No. 5,674,830 of Brenkman, *et al.* (hereinafter referred to as "Brenkman"). Applicants submit that the references are improperly combined and when combined still fail to teach or suggest the claimed invention.

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The Examiner contends that Brenkman discloses alkyl glycosides for the production of microemulsions. However, Brenkman does not suggest the inclusion of microorganisms or the use of alkylglycoside-containing microemulsions for the fermentation of microorganisms. It is unlikely that one of ordinary skill in the art would be motivated to combine the teachings of just any reference related to microemulsions with the teachings of Tellier unless that secondary reference at least mentioned fermentation and/or the inclusion of a microorganism in the microemulsion. Thus, Applicants submit that there is insufficient rationale for combining the teachings of the reference.

Applicants submit that the combined references fail to establish a prima facie case of obviousness and respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

Applicants submit that all pending claims patentably distinguish over the prior art of record and known to Applicants, either alone or in combination. Accordingly, reconsideration, withdrawal of the rejections and a Notice of Allowance for all pending claims are respectfully requested.

Respectfully submitted,

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(Date):

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